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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. **71-1461**

EDMUND CADOUX,

Petitioner

v.

PLANNING AND ZONING COMMISSION
OF THE TOWN OF WESTON, CONNECTICUT

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

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Petitioner, EDMOND CADOUX, prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Connecticut entered on February 8, 1972, which upheld a municipal zoning regulation prohibiting from within the entire territorial limits of the municipality the use of land for the conduct of ordinary commerce and trade, except for certain limited occupations conducted in a single-family residence by the residents thereof, and which regulation otherwise restricts the use of land within said municipality to one-family houses built on lots containing a minimum of two acres.

Opinions Below

The opinion of the Supreme Court of the State of Connecticut (App. 1) is reported in Vol. 33, Conn. Law Journal No. 35, (February 29, 1972) p. 5.

The opinion of the Court of Common Pleas of the State of Connecticut (App. 2) is unreported.

Jurisdiction

The judgment of the Supreme Court of the State of Connecticut was dated February 8, 1972, and announced on February 29, 1972. Timely Motion for Reargument was filed on March 3, 1972, and was denied on March 9, 1972. This court has jurisdiction under 28 U.S.C. Sec. 1257 (3).

Questions Presented

1. Whether a state which, by action of a political subdivision, excludes from within the entire territorial limits of that municipality the great majority of ordinary, otherwise lawful, businesses, trades and professional practices, violates the Fourteenth Amendment.

2. Whether a state which, by action of a political subdivision, limits the use of land within that subdivision to single-family homes built on lots of a minimum of two acres, certain home occupations, and farming violates the Fifth and Fourteenth Amendments.

3. Whether a zoning regulation which allows only residents of a municipality to practice certain trades and professions within that municipality sets up an invalid classification under the Fourteenth Amendment.

Constitution and Statutory Provisions Involved

1. Firth Amendment

> "No person shall . . . be deprived of life, liberty, or property, without due process of law."

2. Fourteenth Amendment, Section 1.

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

3. Section 8-2, Conn. Gen. Stats. (Rev. to 1968) (App. 3)

4. Zoning Regulations of the Town of Weston, Connecticut, have no official citation (App. 4).

Statement of the Case

Facts

The respondent established zoning regulations purporting to act under the authority contained in the Connecticut General Statutes, Section 8-2. Those regulations designated the entire town of Weston as a residential and farming district. No use may be made of buildings or premises within that district except, (a) single family dwellings located on two acres of land; (b) certain professional occupations operated by resident occupants only out of their homes; (c) leasing of rooms and taking of boarders; (d) farming, nursery gardening and the incidental display and sale of farm and garden produce raised by an owner-occupant; (e) earth removal incidental to a bona fide construction or grading operation; (f) certain municipal, charitable and non-profit uses as a special permit; and (g) one apartment per single family dwelling unit, as a special permit.

The petitioner is a resident of Weston and owns slightly over 4 acres of land on Route 57 in Weston, which is contiguous to a nonconforming shopping area.

On May 17, 1967, the petitioner applied to the respondent for an amendment to the zoning regulations which would authorize the use of property within the Town for stores and other buildings where goods are sold or service is rendered primarily at retail, business and professional offices, banks and other

financial institutions, and restaurants and other food service establishments where customers are served while seated and within an enclosed building. A zone change to the new zone was sought for property of the petitioner and the adjacent property presently used as a shopping area.

Under its present zoning standards, the Town, containing 19.9 square miles, has a maximum holding capacity of 11,524 persons. The general area in which the proposed zone was to be located, designated as Weston Center, contained the basic institutions making up the Town, i.e., churches, schools, library, town hall, and a nonconforming business center. That center contains stores selling food, liquor, hardware, hobbies, dry goods, stationery, and offered service facilities for dry cleaning, one bank, one barbershop, a gas station, a post office, a real estate office, and a luncheonette. All of the facilities are contained in five buildings with about 18,140 square feet of floor area. Parking is in short supply and crowded merchandising conditions and makeshift extensions for stock exist. Although the Weston median family income is 68% higher than the Fairfield County average, the annual per capita retail sales within that Town are only about 25% of the state average. There exists within Weston an annual sales potential for convenience goods only of $1,876,000.00 which would justify from 18,760 to 31,200 square feet of additional retail floor area; which figures do not take into consideration the higher family income, future population growth and likely need for professional and local service business offices that have not been included. The petitioner's property is the logical location for an additional convenience shopping facility since it would amount to an extension of the existing center, instead of a split in retail facilities which would reduce the convenience aspect, and has the potential for coordinated driveway layouts with the nonconforming use.

An investigation of the traffic conditions on the state highway upon which the petitioner's land fronts, made by a traffic engineer, points out that the road is approximately 24 feet wide of asphaltic surfaced pavement, bends to the right on a 6.5 degree curvature to the south, leaving a sight distance of approximately 325 feet to the south, and bends left to the north at the same

degree of curvature, with a sight distance of 500 feet to the north. The Connecticut State Highway Department has rated this section of highway for a safe speed of 42 to 49 miles per hour, and the posted speed limit is 35 miles per hour. The average daily volume of traffic during the period May 24 to June 1, 1967, was 3800 vehicles, an increase from the highway department's 1963 estimate of 3100 vehicles. The accident listing for the years 1961 through 1966 shows a total of 13, an average of 2.5 per year, of which three involved fixed objects. The traffic engineer concluded that the highway had sufficient width to accommodate any forecasted traffic; that the sight distance was sufficient for the posted speed limit; and that the site plan was in keeping with good design practice and should not create any traffic hazard.

How Federal Question is Presented

On November 7, 1967, petitioner appealed to the Court of Common Pleas from the adverse action of the respondent, and alleged, *inter alia*,

> "C. Said denial of the plaintiff's Application is tantamount to the taking of his property without just compensation and without due process of law, in violation of the Constitutions of the United States and the State of Connecticut.
>
> "D. Said denial of the plaintiff's Application was confiscatory as to the plaintiff's property in that said plaintiff's propetry, being situated where it is, cannot be used for any other purpose than the purpose for which the plaintiff has applied.
>
> "E. Said denial of the plaintiff's application denies the plaintiff equal protection of the laws, in that said denial perpetuates the monopoly enjoyed by the Weston Shopping Center in said Town of Weston.
>
> "F. Said denial leaves the Town of Weston with but one zoning district, contrary to the statute laws of the State of Connecticut as made and provided.
>
> "G. Said Commission, in denying said application, has abrogated its duty by failing to provide for the legal use of any areas in said Town for services vital to such a community, such as retail stores, offices and other services, contrary to

the statute laws of the State of Connecticut as made and provided." (R. 3)

The petitioner made the following claims of law to the Court of Common Pleas and to the Supreme Court:

"76. The denial of the plantiff's application was tantamount to the taking of his property without just compensation and without due process of law in violation of the constitutions of the United States and the State of Connecticut.

"77. The denial of the plaintiff's application was confiscatory as to the plaintiff's property.

"78. The denial of the plaintiff's application denies the plaintiff equal protection of the law in that said denial perpeteuates the monopoly enjoyed by the Weston Shopping Center, a pre-existing nonconforming use.

"79. Denial of the plaintiff's application leaves the Town of Weston with but one zoning 'use' district, contrary to the laws of the State of Connecticut.

"80. It is beyond the police power of the Town of Weston to exclude completely from within its territorial limits the great majority of otherwise lawful business uses.

"81. There is no affirmative authority in the General Statutes which permits the Town of Weston to exclude from within its entire territorial limits otherwise lawful business uses.

"82. The present zoning regulations within the Town of Weston are illegal, null and void, in that they fail to set forth a comprehensive plan of zoning as required by the General Statutes.

"83. By denying the plaintiff's application, the defendant commission has prohibited the legal use of any land area in said town for services vital to the community such as retail stores, offices, and other service businesses." (R. 41-42)

Reasons For Granting The Writ

Zoning measures restricting the general rights of a landowner must bear a substantial relation to the public health, safety,

morals, or general welfare, and cannot impose unnecessary and unreasonable restrictions upon the use of private property or the pursuit of useful activities. *Village of Euclid v. Ambler Realty Co.*, 272 US 365, 387, 71 L ed 303, 310, 47 S. Ct. 114; *Nectow v. Cambridge*, 277 US 183, 188, 72 L ed 842, 844 S. Ct. 447; *Washington* ex rel *Seattle Title Trust Co. v. Roberg*, 278 US 116, 121, 73 L ed 210, 213, 49 S. Ct. 50.

The zoning regulation which the Connecticut courts have held to be valid has provisions that cut sharply through the fabric of constitutionally protected rights. The restrictions upon the use of property results in the average Weston household income being 68% higher than that of Fairfield County as a whole, which had the highest household income as of the 1960 census of any county in the United States. No business or commercial use, except extremely limited ones and then by residents only, are allowed. The fundamental right of all citizens to travel freely between the states and settle therein *Truax v. Raich*, 239 US 33, 39, 60 L. ed. 131, 134, 36 S. Ct. 7; *Shapiro v. Thompson*, 394 US 618, 634, 638, 22 L Ed 2d 600, 615, 617, 84 S. Ct. 1322) becomes an empty one, if a State, by action of a subdivision thereof, can prevent the less-than-affluent, not to say poor, citizens of this nation from obtaining employment and housing therein.

This court has held that a state cannot unreasonably curtail or bar from within its sovereignty the common right to engage in a lawful private business. *New State Ice Co. v. Liebman*, 285 US 262, 278 76 L ed 747, 753, 52 S. Ct. It has declared that the liberty to carry on and engage in a useful business is guaranteed by the 14th Amendment. *Adams v. Tanner*, 244 US 590, 597, 61 L ed 1336, 1344. It has ruled that a regulation is suspect because of a *de facto* discrimination on the basis of wealth. *Harper v. Virginia State Board of Education*, 383 US 663, 668, 16 L. Ed 2d 169, 86 S. Ct. 1079, 1082; *McDonald v. Board of Election Commissioners of Chicago*, 394 US 802, 807, 22 L Ed 2d 739, 89 S. Ct. 1404; *See* Note, *Exclusionary Zoning and Equal Protection*, 84 Harvard Law Review 1945 (May 1971); Note, *Large Lot Zoning*, 78 Yale L.J. 1418 (1969). Because it touches upon and restricts the fundamental rights of interstate travel and to engage in a useful, lawful, private business, the regulation

must be judged by the standard of whether it promotes a *compelling* state interest. *Shapiro v. Thompson, supra.* It is significant that even the Connecticut Supreme Court had itself once recognized *no* public interest in such a regulation, not to say a compelling one, when, in *Gionfriddo v. Windsor,* 137 Conn. 701, 706, 81 A2d 266 (1951), it said with regard to a zoning regulation purporting to prohibit the use of any lot within the Town for the sale and display of motor vehicles:

> "The only possible claim which could be made for the constitutionality of the ordinance in question would be under that feature of the police power which permits restrictions on the use of property for the purpose of promoting the economic welfare of the community by stabilizing real estate values. It is not reasonable to assume that the absolute prohibition of the display of any new or used automobiles in an open lot in any zone is necessary to protect these values. It follows that such an all-inclusive prohibtion is not reasonably related to the exercise of that factor of the police power under which it alone could be justified."

The misuse of the police power is the issue in this case, a misuse condemned by the United States Commission on Civil Right.

> "Various exercises of local government authority such as . . . zoning and land use requirements . . . have been used to exclude minority group members . . . even from entire communities." Statement of United States Commission on Civil Rights Hearings before the Subcommittee on Education of the Senate Committee on Labor and Public Welfare, 91st Cong. 2d Sess., 352-354 (1970).

The decision of the Supreme Court of the State of Connecticut gives a color of right to the Town of Weston to continue to practice exclusionary zoning and has, as a practical matter, done so by excluding all but those persons of superior income or wealth who can afford to reside on two acres or more of land to live in the Town.

As of the 1970 Census, only two of the 2,048 housing units

in the entire Town of Weston were occupied by Negroes. U. S. Bureau of the Census, *Census of Housing: 1970, General Housing Characteristics, Final Report HC (1)-A8 Connecticut*, U. S. Government Printing Office, 1971, Table 23, p. 8-69. Such housing units have a medium value in excess of $50,000 and rent for $216 a month (*Id*, Table 24, p. 8-73), as compared to a statewide median value of $25,000 and monthly rental of $105. (*Id* Table 4, p. 8-11).

Since the case was decided in the lower Connecticut court in 1969, these facts from the 1970 census are not of record in this case; nonetheless, they reinforce the pressing need for this Court to again affirm that neither the several States nor their political subdivisions can submerge the fundamental guarantees of the Constitution by advancing some ostensible justification for the invocation of the police power. *Adams v. Tanner, supra.*

The decision of the Connecticut Supreme Court is clearly not in accord with the holding of this Court in *Village of Euclid v. Ambler Realty Co.*, 272 US 365, where it held that the permissible end use of the zoning power is "not that industrial development shall cease . . . , but that the course of such development shall proceed within definitely fixed lines." *Id* at 389 Mr. Justice Sutherland quoted with approval from *Aurora v. Burns*, 319 Ill. 84, 93-94, 149 N.E. 784, 788:

> ". . . the segregation of industries, commercial pursuits and dwellings to particular districts in a city, when exercised reasonably may bear a national relation to the "health, morals, safety and general welfare of the community . . .' ", 272 US at 392.

Thus, the approval of the restrictions of the zoning power, at least with regard to unobnoxious uses, was clearly predicated upon such uses being allowed *somewhere* within the community. The total exclusion of commerce except where conducted by residents was never condoned by the court, and should be condemned.

Perhaps the most practical reason for granting the writ of certiorari in this case is the inordinate amount of time now being

devoted by the lower federal courts to the issues of bussing for racial balance and of the unequal educational opportunity provided by public school systems because of the use of the property tax as a means for funding such education. Such issues are symptomatic of the misuse of the police power in the manner exercised by the respondent and this case presents a timely opportunity for this court to strike at the root of such symptoms.

> "Miserable and disreputable housing conditions may do more than spread disease and crime and immorality. They may also suffocate the spirit. . . . They may indeed make living an almost insufferable burden." *Berman v. Parker* 348 US 26, 32

The simple effect of Weston's policy is to lock into such environs present inhabitants thereof by raising artifical barriers in the path of those seeking better housing and employment. It should not be allowed to continue that policy.

Respectfully submitted,

Melvin J. Silverman
Counsel for Petitioner

APPENDIX 1

Supreme Court Judgment Date
Feb. 8, 1972

Decision Announced
Feb. 29, 1972

SUPREME COURT
December Term, 1971

EDMOND CADOUX *v.*
PLANNING AND ZONING COMMISSION OF THE TOWN OF WESTON

Appeal from the denial of an application for an amendment of zoning regulations, brought to the Court of Common Pleas in Fairfield County at Stamford and tried to the court, *O'Sullivan, J.*; judgment dismissing the appeal, from which the plaintiff appealed to this court. *No error.*

Melvin J. Silverman, with whom, on the brief, was *Max R. Lepofsky,* for the appellant (plaintiff).

Robert M. Wechsler, with whom were *Bernard Glazer* and, on the brief, *Harvey J. Rothberg,* for the appellee (defendant).

RYAN, J. On May 17, 1967, the plaintiff filed an application with the defendant commission for an amendment of the zoning regulations establishing a town shopping center district. The proposed amendment would authorize the use of property within the proposed district for stores and other buildings where goods are sold or service is rendered primarily at retail, business and professional offices, banks and other financial institutions, restaurants and other food service establishments where customers are served only when seated and within an enclosed building, including a food takeout service incidental to the primary permitted use. The application was denied and the plaintiff appealed to the Court of Common Pleas, where the appeal was dismissed. From the judgment rendered thereon he has appealed to this court.

The plaintiff's principal claim of error is that the zoning regulations of the town of Weston purport to bar from within the town the use of property for the conduct of ordinary commercial activities unless such activities consist of farming or can

be considered customary home occupations. The plaintiff urges that since there is only one district for the entire town the regulations are illegal and arbitrary.

The zoning regulations of the town of Weston as amended to August 21, 1967, provide, in pertinent part, as follows: "Section 3 — Districts. Inasmuch as existing commercial and industrial uses are adequate to serve the needs and public welfare of the Town of Weston, and a careful and comprehensive survey of the Town discloses no district within its boundaries which can be set aside for commercial or industrial uses without contravening one or more of the purposes of zoning as set forth in Chapter 43 of the General Statutes, the Town of Weston throughout its entire territorial extent is hereby designated as a residential and farming district." In § 4 of the regulations the following uses are permitted: A single-family dwelling house, offices of a doctor, dentist, attorney-at-law, engineer, architect, teacher, artist, musician, writer, photographer, real estate agent, insurance agent, or accountant, or services rendered by a dressmaker, milliner, home cook, plumber, electrician, or home repair or serviceman. The use shall be located in the same building in which the resident occupants reside. It also permits the leasing of rooms and the taking of borders by owner-occupants, farming, nursery gardening, truck gardening and the incidental display and sale of farm produce raised on the premises, removal from the premises of earth materials as part of a bona fide construction or grading operation, and certain special uses.

The testimony of a professional planner appearing at the public hearing on the application on behalf of the plaintiff indicated that the town of Weston is 19.9 square miles in area and has a population of approximately 6700. Weston is a residential community and is so located that there is a general orientation of Weston residents toward the town of Westport, the southwestern region of Connecticut and the city of New York, for employment, shopping and other services. The town has been developed by the construction of single-family houses on lots of two or more acres. The town of Weston has no public water supply, sanitary sewers or public transportation. Its function in the southwestern region of Connecticut is that of a residential area for single-family homes

in a rural Connecticut setting. A shopping center 6.2 acres in area is located in the town of Weston and is maintained there as a nonconforming use. The plaintiff is the owner of a parcel of land consisting of 4.183 acres which is adjacent to the existing shopping center. The shopping center district proposed by the plaintiff included the plaintiff's property as well as the existing shopping center. There is a house on the plaintiff's land.

The question raised by the plaintiff's principal assignment of error has been considered in other jurisdictions. "[T]here is no question as to the right of a municipality to establish a residence district from which all business and commerce may be excluded. The question arises as to the extent of that district. May such a district encompass the entire municipality, and may the municipality be so zoned that there is no permissible use except a residential use and such auxiliary uses as are customarily incidental thereto? . . . It is, in each case, a question of fact as to reasonableness which depends upon the needs of the community and the adaptability of property therein for residential use." 1 Rathkopf, Law of Zoning and Planning (3d Ed.), p. 14-8. In a leading case the court said: "Traditional concepts of zoning envision a municipality as a self-contained community with its own residential, business and industrial areas. It is obvious that Valley View, Ohio, on the periphery of a large metropolitan center, is not such a self-contained community, but only a adventitious fragment of the economic and social whole. We cannot conclude as a matter of law that an ordinance which places all of the area of such a village into a residential district is *per se* arbitrary and unreasonable, with no substantial relation to the public health, safety, morals or general welfare. It would appear contrary to the very purposes of municipal planning to require a village such as Valley View to designate some of its area for business or industrial purposes without regard to the public need for business or industrial uses. The council of such a village should not be required to shut its eyes to the pattern of community life beyond the borders of the village itself. We think that it is not clearly arbitrary and unreasonable for a residential village to pass an ordinance preserving its residential character, so long as the business and industrial needs of its inhabitants are supplied by other accessible areas in the community at large." *Valley View Village, Inc. v. Proffett,*

221 F.2d 412, 418 (6th Cir.); see *Connor v. Township of Chanhassen*, 249 Minn. 205, 81 N.W.2d 789; *Old Westbury v. Foster*, 193 Misc. 47, 48, 83 N.Y.S.2d 148. The reasonableness of a zoning ordinance must be judged by the circumstances of each particular case. *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 47 S. Ct. 114, 71 L. Ed. 303; note; 54 A.L.R. 1030.

The town of Weston is on the periphery of other larger metropolitan centers. The Weston shopping center, although its use is nonconforming under the present zoning regulations, contains the post office, a service station, a food market, a dry cleaner, a package store, a hardware store, a hobby store, a real estate office, a drygoods store, a bank, a drug-store and a luncheonette. On these facts we cannot say that the defendant commission was unreasonable or that it failed to consider the needs of the community. We note also that among the reasons given by the defendant for the denial of the plaintiff's application was the finding that the "increased traffic would present a hazard in view of the width and curvature of the road and in its location opposite the entrance to schools and school bus garage." The trial court's ruling was correct.

As to the remaining assignments of error, an examination of the memorandum of decision of the trial court indicates that the claims of the plaintiff were thoroughly considered and correctly determined. No further discussion by this court is required.

There is no error.

In this opinion the other judges concurred.

APPENDIX 2

No. 7740 EDMOND CADOUX vs. PLANNING AND ZONING COMMISSION OF THE TOWN OF WESTON	COURT OF COMMON PLEAS FAIRFIELD COUNTY OCTOBER 3, 1969

MEMORANDUM OF DECISION

This is an appeal from the action of the defendant commission in denying plaintiff's application to amend the zoning regulations of Weston by establishing a town shopping center district zone. A shopping center is located in Weston and is maintained there as a nonconforming use. Plaintiff owns property adjoining this center. His proposed zone would encompass the present center and also his property, thus allowing him to construct such a center on his property. He is obviously aggrieved for the purpose of bringing this appeal. His claims concerning the actions of the defendant commission are set out in the amended complaint dated May 20, 1968, which incorporates in one document various amendments made to the original complaint.

In paragraph 4. A. (1) of the amended complaint, plaintiff claims that the defendant commission postponed the hearing to a date close to the election date of the town thereby making the application a political issue. The application was received by the defendant commission on May 18, 1967. By § 8-3 of the General Statutes, the commission was required to hold a hearing within 90 days after receipt of the application, or by August 16, 1967. Plaintiff and his attorney conferred informally with the defendant commission on June 22, 1967. On June 30, 1967, the commission wrote plaintiff stating that it was the opinion of the commission that it could obtain a better cross section of public reaction to the proposal if the hearing were held after Labor Day and requesting that plaintiff agree to an extension of time for the hearing to be held on September 13, 1967. It was proper for the defendant commission to attempt to find out how the public felt about the proposed change of zone. *Mallory v. West Hartford*

138 Conn. 497, 506. Through his attorney, the plaintiff replied by a letter dated July 3, 1967, stating that he was willing to extend the date for the hearing to September 13, 1967. He said he did this without relinquishing any rights to priority of any application or actions which may be taken by the owner of the existing shopping facility to file a formal application which might limit the area for a shopping facility to her own area or property only. There was a reason for the request of the defendant commission. People customarily go on vacations in the summer and are away. The extension was not for an inordinate length of time — being only of 28 days. The plaintiff acquiesced in the request. The election was to be held on November 7, 1967, almost two months later. Plaintiff's claim in this regard is without substance.

In paragraph 4. A. (2) of the amended complaint plaintiff claims that the defendant commission failed to maintain order and decorum so as to permit the plaintiff to make an orderly presentation of his case without interruption, cat calls, boos and other disturbances. The hearing was well attended and the opposition was vocal. Plaintiff's attorney is experienced, having appeared before zoning commissions for thirty years. He stated on the record at the conclusion of the hearing ". . . what happened here tonight, obviously, did not bother me in the least. I am used to it," and also, "Thank you. I want to thank the Commission for extending me the courtesy to speak, although from time to time there may have been demonstrations, and, as I indicated before, I heard it before, and this doesn't bother me." Plaintiff's claim in this regard is without substance.

In paragraph 4. A. (3) of the amended complaint, plaintiff claims that the defendant commission permitted political candidates to make political presentations at the time of the hearing, indicating their opposition to the plaintiff's application as official political party positions. There was nothing improper for a political candidate to attend the hearing and give the defendant commission the benefit of his views. Plaintiff's claim in this regard is without substance.

In paragraph 4. A. (4) of the amended complaint, plaintiff claims that the defendant commission permitted the hostility

engendered by an organized group in said community to intimidate and prohibit those people in favor of the plaintiff's application to be present and be heard. At the conclusion of plaintiff's case in chief, the chairman of the defendant commission twice asked any proponents of the application to come forward and speak. One person did so. Thus, no one was deprived of the right to speak to the defendant commission, and anyone who might have felt embrassed in speaking at the hearing could have expressed his views in a letter to the defendant commission. Many such persons so wrote the commission and their letters were included in the record. Plaintiff's claim in this regard is without substance.

In paragraph 4. B. of the amended complaint, plaintiff claims that certain members of the defendant commission refused to disqualify themselves from hearing the plaintiff's application despite the fact that one of its members was a party to the Republican platform committee which drafted the Republican platform announcing its opposition to the extension of any shopping center or to any commercialization in the Town of Weston, and other members of the commission ran on said platform and by doing so demonstrated a biased and personal interest in the subject matter and in the outcome of the plaintiff's application. At the beginning of the hearing, plaintiff's attorney noted for the record that publicity had been given the application because of letters written the commission and because of statements made by those seeking office in the coming election. He asked whether such communications had in any way prevented any of the commission from making a fair and impartial decision in the case and if they had, would the members so state for the record so they might disqualify themselves from the hearing. He also asked if any individual or groups of individuals approached the commission individually or collectively and discussed the merits of the application and, if such discussions influenced the commission so it could not render a fair impartial decision in this case, to disqualify themselves from the hearing. He further asked if certain newspaper articles had in any way affected the judgment of the board and if so, would they so state and disqualify themselves. The members of the defendant commission indicated they were not prejudiced or disqualified and the hearing proceeded.

At the hearing on the appeal, plaintiff called as his witnesses, Francis G. Mason, chairman of the defendant commission, and Nils Kindwall, a member of it. Mr. Kindwall specifically stated his mind was open at the hearing. Both these men were candidates for election to the commission at the election held on November 7, 1967. Plaintiff attempted to show that both were Republicans and were running for office on a platform which pledged opposition to the plaintiff's application. His claim therefore is that both had prejudged the issue. The court does not believe that the date when the platform was prepared or whether both men unqualifiedly endorsed it is significant. The court reads the platform, a copy of which was introduced in evidence, as being opposed to "real estate developers" and "industrial parks." The court is not persuaded that Francis G. Mason and Nils Kindwall had prejudged plaintiff's application and so finds as a fact.

In Paragraph 4. C. of the amended complaint, plaintiff claims that the denial of plaintiff's application is tantamount to the taking of his property without just compensation and without due process of law in violation of the Constitution of the United States and the State of Connecticut. Zoning is considered a regulation of property and unless the regulation is so severe that it permanently prevents all reasonable use of the property, it is not a constitutional taking. Plaintiff did not attempt to demonstrate this latter to be the fact concerning his property. Plaintiff's claim in this regard is without substance.

In paragraph 4. D. of the amended complaint, plaintiff claims that the denial of the plaintiff's application was confiscatory, as his property, being situated where it is, cannot be used for any other purpose than the purpose for which the plaintiff has applied. Plaintiff acquired the property concerned on September 30, 1966, long after zoning had been adopted in Weston. There is a house on the property which is under lease to the school board. It is used for the town's school offices. The property can be used for a dwelling house. Plaintiff did not attempt to demonstrate that it can only be used for a shopping center. Plaintiff's claim in this regard is without substance.

In paragraph 4. E. of the amended complaint, plaintiff claims

that the denial of his application denies him equal protection of the laws in that said denial perpetuates the monopoly enjoyed by the existing shopping center. That shopping center was built before the zoning regulations of the town were enacted. It is a nonconforming use, recognized and continued as such by the zoning regulations. It is the only shopping center in town. There is nothing constitutionally objectionable in this situation. However the equal protection clause does not require the town to permit plaintiff to build another nonconforming shopping center. Plaintiff's claim in this regard is without substance.

In paragraph 4. F. of the amended complaint, plaintiff claims that the denial of his application leaves the Town of Weston with but one zoning district, contrary to the statute laws of the State of Connecticut as made and provided. Section 3 of the zoning regulations provides that "the Town of Weston throughout its entire territorial extent is hereby designated as a residential and farming district." There is nothing improper about this. *Lebanon v. Woods*, 153 Conn. 182, 189, 192. Section 3 of the zoning regulations also states that existing commercial and industrial uses are adequate to serve the needs of the town and a careful and comprehensive survey of the town discloses no district within its boundaries which can be set aside for commercial or industrial uses without contravening one or more of the purposes of zoning as set forth in the General Statutes. Section 4 of the regulations contains a long list of permitted uses. Plaintiff's claim in this regard is without substance.

In paragraph 4. G. of the amended complaint, plaintiff claims that the commission, in denying the application, has abrogated its duty by failing to provide for the legal use of any areas in the town for services vital to such community such as retail stores, offices and other services, contrary to the statute laws of the State of Connecticut as made and provided. The town has a population of 6700. The record indicates that there are existing within the town under the zoning regulations, churches, clubs, schools, a fire house, a library, a post office, a town hall, a school bus garage, a food market, a dry cleaner, a package store, a hardware store, a hobby store, a real estate office, a dry goods store, a barber shop, a luncheonette, a stationery store, a bank, a drug

store, gas stations, nurseries and a fine restaurant. Plaintiff's claim in this regard is without substance.

In paragraph 4. H. of the amended complaint, plaintiff claims that the commission's reasons for the denial of the application are not based on fact and are contrary to the evidence presented to the commission. The resolution which was unanimously approved by the commission states in part: "The application of Edmond Cadoux is denied. The reason for this denial include the following:

1. The requested zone change is not in conformity with the comprehensive zoning plan of the Town of Weston.

2. Applicant has not proved that any changes have occurred which have substantially altered the character of the area.

3. The applicant has not proved that the changes sought would further the public welfare.

4. The applicant has not proved that there is sufficient need for the proposed uses so as to benefit the town in general.

5. Route 57 (Weston Road) in the area of the proposed change is a two lane roadway, one travel lane in each direction. Going north adjacent to applicant's property this road curves to the east and then to the west: The increased traffic would present a hazard at this point in view of the width and curvature of this road and in its location opposite the entrance to the schools and school bus garage."

The probative force of the evidence presented was for the defendant commission to decide. *Parish of St. Andrew's Church v. Zoning Board of Appeals,* 155 Conn. 350, 359.

The record shows that the requested zone change is not in conformity with the comprehensive plan of the town.

The record shows that plaintiff did not prove that any changes have occurred which have substantially altered the character of the area.

Plaintiff's expert stated to the defendant commission con-

cerning the existing shopping center: "Yet, for a town of your size, it is a complete center. It has all of the aspects of a good center of town." Thus the defendant commission reasonably could conclude that the changes sought would not further the public welfare or that there was sufficient need for the proposed uses so as to benefit the town in general.

The record shows that Weston Road in the area of the proposed change is a two lane roadway with one lane of travel in each direction and with curves near the plaintiff's property. Thus the defendant commission reasonably could conclude that increased traffic from the proposed new shopping center would present a hazard at the point in question.

The record therefore supports the reasons stated by the defendant commission for its denial of the application.

The action of the defendant commission in denying the application for the change and leaving plaintiff's property in its previous classification was based on reasonable grounds and cannot be said to be arbitrary or confiscatory. *Zygmont v. Planning & Zoning Commission,* 152 Conn. 550; *State National Bank v. Planning & Zoning Commission,* 156 Conn. 99.

The appeal is dismissed.

O'Sullivan, J.

APPENDIX 3

SEC. 8-2. REGULATIONS. The zoning commission of each city, town or borough is authorized to regulate, within the limits of such municipality, the height, number of stories and size of buildings and other structures; the percentage of the area of the lot that may be occupied; the size of yards, courts and other open spaces; the density of population and the location and use of buildings, structures and land for trade, industry, residence or

other purposes, and the height, size and location of advertising signs and billboards. Such zoning commission may divide the municipality into districts of such number, shape and area as may be best suited to carry out the purposes of this chapter; and, within such districts, it may regulate the erection, construction, reconstruction, alteration or use of buildings or structures and the use of land. All such regulations shall be uniform for each class or kind of buildings, structures or use of land throughout each district, but the regulations in one district may differ from those in other district, and may provide that certain classes or kinds of buildings, structures or use of land are permitted only after obtaining a special permit or special exception from a zoning commission, planning commission, combined planning and zoning commission or zoning board of appeals, whichever commission or board of regulations may, *notwithstanding any special act to the contrary*, designate, subject to standards set forth in the regulations and to conditions necessary to protect the public health, safety, convenience and property values. Such regulations shall be made in accordance with a comprehensive plan and shall be designed to lessen congestion in the streets; to secure safety from fire, panic, flood and other dangers; to promote heath and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population and to facilitate the adequate provision for transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration as to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality. Such regulations shall not prohibit the continuance of any nonconforming use, building or structure existing at the time of the adoption of such regulations. Any city, town or borough which adopts the provisions of this chapter may, by vote of its legislative body, exempt municipal property from the regulations prescribed by the zoning commission of such city, town or borough; but unless it is so voted municipal property shall be subject to such regulations.

APPENDIX 4

ZONING REGULATIONS OF THE TOWN OF WESTON, CONNECTICUT

As Amended to August 21, 1967

In accordance with the provisions of Chapter 43 of the General Statutes of the State of Connecticut, Revision of 1949, and for the purpose of providing for the health, safety and general welfare of the Town of Weston, to conserve the value of real property, to encourage the most appropriate use thereof throughout the Town and to accomplish the other purposes set forth in detail in said Chapter of the General Statutes, and in accordance with a comprehensive plan the Planning and Zoning Commission of the Town of Weston hereby adopts the following regulations:

Section 1 — General

Except as hereinafter provided, no land, building or structure or part thereof, shall hereafter be used and no building or part thereof or other structure shall be erected, constructed, reconstructed, extended, enlarged or altered, and no building or structure or part thereof shall be moved on to any plot or parcel of land except in conformity with these regulations.

Section 2 — Non-Conforming Uses

Any building, structure or use actually existing on the effective date of these regulations may be continued, even though such building, structure or use does not conform with the provisions of these regulations; SUBJECT, HOWEVER, to the following conditions and restrictions:

(a) No non-conforming building or structure or non-conforming portion of a building or structure shall be enlarged.

(b) No non-conforming use shall be enlarged or increased, or changed to a non-conforming use which contravenes to a greater extent these regulations or the purposes of zoning as set forth in Chapter 43 of the General Statutes.

(c) Any non-conforming use existing on the effective date of these regulations may be hereafter extended throughout any

part of a building which was manifestly arranged or designed for such use on said effective date, notwithstanding the restriction in sub-section (b) above against the enlargement of such use but SUBJECT, HOWEVER, to the other provisions of said sub-section.

(d) Any non-conforming use, building, structure or premises hereafter changed to conform with the requirements of these regulations shall become subject to these regulations and shall not be thereafter permitted or re-established as non-conforming.
June 24, 1955

(e) When a non-conforming use has not been carried on for a continuous period of one year, such non-conforming use shall not thereafter be resumed or replaced by any other non-conforming use and any building or premises which is non-conforming or is used for a non-conforming use and which is likewise not used for such non-conforming use for a continuous period of one year, must thereafter be used in conformity with these Regulations.

(f) Any non-conforming building or structure or part thereof which is unsafe may be strengthened or restored to a safe condition, provided the right to maintain the non-conforming status thereof has not otherwise been lost or abandoned.
Feb. 25, 1960

(g) In the event of the interruption of any non-conforming use or damage to or destruction of any non-conforming building or structure as the result of fire, flood, storm or other casualty, subsequent to the date on which there regulations or amendment thereto becomes effective, such use may be resumed or such building or structure may be reconstructed and structurally altered and restored to substantially its former condition: PROVIDED, HOWEVER, in the event of interruption, the resumption takes place within six months of the time of the interruption, and in the event of damage or destruction, the cost of such reconstruction or structural alteration is less than fifty per cent of the fair market value of such property and such reconstruction or alteration is commenced within six months of the date of such damage or destruction.

Section 3 — DISTRICTS

Inasmuch as existing commercial and industrial uses are adequate to serve the needs and public welfare of the Town of Weston, and a careful and comprehensive survey of the Town discloses no district within its boundaries which can be set aside for commercial or industrial uses without contravening one or more of the purposes of zoning as set forth in Chapter 43 of the General Statutes, the Town of Weston throughout its entire territorial extent is hereby designated as a residential and farming district.

Aug. 21, 1967

Section 4 — PERMITTED USES

No building, structure or premises shall be built, erected altered, used, arranged or designed to be used in the Town for other than one or more of the following specified purposes:

(a) Single family dwelling house on its own separate lot with the customary accessory buildings for the use of the occupants such as a private garage. For the purpose of these Regulations, a "family" is one or more persons living together as a housekeeping unit who are all related by blood, marriage or adoption, or a group of persons living together as a housekeeping unit who are unrelated by blood, marriage or adoption, except that such a group shall not exceed four (4).

(b) Offices of a doctor, dentist, attorney-at-law, engineer, architect, teacher, artist, musician, writer, photographer, real estate agent, insurance agent, or accountant, or services rendered by a dressmaker, milliner, home cook (those persons who prepare preserves, jellies, cakes, breads and other home foods with the usual number and type of household appliances found in the home), plumber, electrician or home repair or service man, subject to the following:

1. such uses shall be conducted by resident occupants only,
2. there shall not be more than three employees, whether part or full time,
3. such uses shall be located in the same building in which

such resident occupants reside and there shall be no outside storage.

4. such uses are confined to not over one-third of the total floor area of the residence building,

5. such use shall create no noise, odor or unsightly condition noticeable off the premises,

6. there shall be no display or advertising except a small name plate not exceeding two (2) square feet in area,

7. no more than one commercial vehicle shall be used in connection with the service and the vehicle shall not exceed one ton in design capacity and shall be housed in an enclosed garage when not in use,

8. all products sold on the premises shall be made on the premises.

9. parking area or areas shall be approved by the Commission as being of adequate size for the particular use, suitably screened with evergreen planting, walls or fences or combinations thereof if determined necessary or appropriate by the Commission, and with entrance and exit drives laid out so as to minimize traffic hazards,

10. where the proposed use would involve the alteration of or addition to a structure designed and built originally for other uses, the structure must be deemed by the Commission to be adaptable to the proposed use from the point of view of public health and safety and the other requirements of the Zoning Regulations, and

11. there shall be no mechanical and structural fabrication or assembly of the products or items.

(c) Leasing of rooms and taking of boarders by owner occupants, PROVIDED, HOWEVER, that not over three roomers or boarders are thus accommodated within the dwelling unit and without cooking facilities and that off-street parking facilities are provided, and PROVIDED FURTHER, that nothing in this section shall be construed to permit tourist cabins, trailer camps, apartments, hotels, inns, taverns or roadhouses.

(d) Farming, nursery gardening truck gardening and the incidental display and sale of farm and garden produce raised on the premises by an owner-occupant provided that the areas, facilities and intensity of use devoted to the sale of produce remain incidental to the primary use of the property. In no case shall the area devoted to the display and sale of such products exceed 400 square feet of ground and/or floor space. Nurseries shall be subject to the following additional conditions:

1. the premises on which such nurseries are maintained shall be at least four acres in size,
2. no stock shall be maintained or permitted on the premises except that grown on the site for at least one year except that incidental storage of additional stock for landscaping purposes is permitted,
3. the sale of such stock is permitted provided that no structure or covered stand shall be utilized for such sale,
4. a greenhouse may be allowed on such premises, providing it is no more than 1,000 square feet in area and at least 100 feet from all property lines,
5. no more than one commercial vehicle shall be used and the vehicle shall not exceed one ton designed capacity and shall be housed in an enclosed garage when not in use.
6. no other activities not prescribed in these regulations shall be conducted from the premises,
7. parking area or areas shall be approved by the commission as being of adequate size for the particular use, suitably screened with evergreen planting, walls or fences or combinations thereof if determined necessary or appropriate by the Commission, and with entrance and exit drives laid out so as to minimize traffic hazards, and
8. Advertising signs shall be limited to two (2) of no more than four square feet in area each,
9. there shall not be more than three employees, whether part or full time.

(e) Removal from the premises of earth material as part of a bona fide construction or grading operation, to be completed within a reasonable time and provided the Commission determines that the proposed plan will not result in damage to the landscape or substantial impairment to scenic beauty resulting from such operations. Before commencing work on any such removals, a notice in writing must be filed with the Planning and Zoning Commission describing the nature and extent of such removal operations and the person performing such work shall not proceed with the same until notified by the Commission in writing that it is permissible to do so. In determining what action should be taken with respect to said notice, the Commission shall require that a contour map, prepared and certified substantially correct by a registered land surveyor showing the existing contours of the property involved and the proposed contours of said property after such removals have been completed, be filed with the Commission together with a detailed written description, indicating the nature and extent of such proposed construction or grading operations, the date on which the various stages of said operations will be completed, including the date of final completion, and a cash performance bond or surety performance bond in such form and amount as shall be specified by said Commission to ensure compliance with the approved contour map thus filed and the plan for said operations as contained in said written description. Said data shall be required by the Commission as a condition for permitting such operations under this subsection of these regulations, in any case where the same is found necessary by the Commission to enable proper administration of this sub-section.

(f) Special Permit Uses: The Planning and Zoning Commission, upon receipt of an application and an application fee to be set by the Commission may, after public notice and hearing, grant a Special Permit for the following uses, provided the Commission shall find that the conditions hereinafter set forth as to such use are met:

1. Places of worship, parish house and Sunday School; public school; public museum; town buildings; playgrounds; public parks and conservation areas; a bona

fide, non-commercial country or golf club; nursery schools; public libraries; community buildings (such use as Y.M.C.A. or bona fide community theater) and private schools; PROVIDED, HOWEVER, that the private school carries a curriculum of study comparable to that of a public school, and PROVIDED FURTHER, that

(aa) The location and size of the use, the nature and intensity of the activities involved in or conducted in connection with it, the size of the site in relation thereto and the location of the site with respect to streets giving access to it, shall be such that it will be in harmony with the appropriate and orderly development of the area in which it is located,

(bb) The location, nature and height of buildings, structures, walls and fences, and the nature and extent of landscaping, screen plantings, and exterior illumination on the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings, or impair the value thereof.

(cc) Parking area or areas shall be of adequate size for the particular use and shall be suitably screened with evergreen planting, walls or fences or combinations thereof if determined necessary or appropriate by the Commission, and the entrance and exit drives shall be laid out so as to minimize traffic hazards,

(dd) In cases where it is proposed to convert a structure designed and built originally for other uses if the structure is deemed by the Commission to be adaptable to the proposed use from the point of view of public health and safety and if it meets the other requirements of the Zoning Regulations, and

(ee) there shall be no more than one sign which sign shall be not more than twelve (12) square feet in in area, setting forth the name of the organization, and necessary small direction signs not to exceed two square feet in area.

2. An apartment which is clearly a subordinate part of a single family dwelling so long as the floor space does not exceed 25% of the entire living area (excluding attic, garages and unfinished areas) of the entire dwelling, or it does not exceed 600 square feet which ever is lesser.

(g) Signs as follows, in addition to other specifically permitted under this Section:

1. Signs advertising the sale or lease of the property on which such signs are located, not exceeding four (4) square feet in area and one per property.
2. Signs erected by governmental agencies in connection with traffic control or governmental operations.
3. Signs bearing the name of the resident or of the residential property not exceeding two (2) square feet in area and one per property.
4. Signs bearing the name only of a resident and located along a road serving the premises where such person resides, not exceeding two (2) square feet in area and not more than one such sign per resident.
5. No such signs or others permitted by this Section shall be illuminated by flashing or colored lights nor shall they be moving signs.

Section 5 — Area and Lot Line Regulations

(a) No residential structure shall be erected on or moved onto, or used, maintained or occupied on, nor shall any structure be converted to residential use on any plot or lot having an area of less than two acres exclusive of any area reserved for or used as a road or right of way.

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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1461

EDMOND CADOUX, *Petitioner*

v.

PLANNING AND ZONING COMMISSION OF THE TOWN OF WESTON, CONNECTICUT, *Respondent*

On Petition for a Writ of Certiorari to the Supreme Court of the State of Connecticut

---

BRIEF FOR RESPONDENT IN OPPOSITION

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BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Supreme Court of the State of Connecticut (App. 1 of Petition) and the opinion of the Court of Common Pleas of the State of Connecticut (App. 2 of Petition) are adequately set forth in the Petition.

JURISDICTION

This Court has no jurisdiction under 28 U.S.C. Section 1257 (3).

This Court is without jurisdiction to decide federal questions not properly raised nor decided in the State Court. *Adler* v. *Board of Education,* 342 U.S. 485, 496 (1952); *Wilson* v. *Cook,* 327 U.S. 474, 483-4 (1946); *Whitney* v. *California,* 274 U.S. 357, 362-3 (1927); *Dewey* v. *Des Moines,* 173 U.S. 193, 197-8 (1899).

Petitioner failed to raise anywhere in his pleadings and, the Court below did not decide the federal questions presented in the Petition.

Petitioner relies on paragraphs C through G of the allegations in the complaint and paragraphs 76 through 83 of his claims of law to the Court of Common Pleas and to the Supreme Court of the State of Connecticut to invoke the jurisdiction of the Court. (Petition for a Writ of Certiorari to the Supreme Court of the State of Connecticut, pp. 5-6; "Pet." hereinafter) Yet, none of the quoted allegations or claims of law relate to the federal questions which Petitioner presents.

For example, paragraph C is the only paragraph quoted from the complaint which even mentions the United States Constitution. It is obvious that the narrow issue framed by said paragraph as to whether the denial of Petitioner's application to amend the zoning regulations is tantamount to a taking without due process of law, bears little resemblance to the much broader and serious issues raised by the Questions Presented.

Secondly, it is unclear and Petitioner leaves to speculation whether in paragraphs D and E he is asserting

rights guaranteed by Article 1, Sections 1 and 8 of the Constitution of the State of Connecticut or rights guaranteed by the United States Constitution. "* * * the fact that a federal question lurks in the case doesn't mean, standing alone, that a state decision will be reviewed." Mr. Justice Brennan, *State Court Decisions and the Supreme Court,* 31 Penn Bar Ass'n, Q. 393, 399 (1960). On the other hand, it is perfectly clear that paragraphs F and G claim only violations of the "statute law of the State of Connecticut." (Pet. 5-6).

Equally important is the very basic fact that Petitioner chose to present the so-called federal issues of "confiscation" and "denial of just compensation" to the Supreme Court of the State of Connecticut as purely evidentiary rather than constitutional questions. In his brief to the Court below, Petitioner framed the issues as follows:

> "4. Did not the Court err in refusing to hear evidence as to whether denial of the plaintiff's application was confiscatory to his land?
>
> "5. Did not the Court err in refusing to hear evidence as to whether the denial of the application was tantamount to a taking of the plaintiff's property without just compensation?"[1]

Accordingly, Respondent respectfully submits that Petitioner failed to properly raise below the federal Questions Presented and this Court is without jurisdiction.

---

[1] Brief of the Plaintiff-Appellant, p. 2, *Edmond Cadoux* v. *Planning and Zoning Commission of the Town of Weston,* 33 Conn. Law J. 35.

QUESTIONS PRESENTED

A. The only question decided by the Supreme Court of the State of Connecticut—on nonfederal grounds—was:

Whether under the particular factual circumstances of this case, Respondent zoning commission acted unreasonably in denying Petitioner's application to amend the zoning regulations to permit the use of his property for a neighborhood shopping center, when such denial leaves the town—as it was before the application was filed—with a residential-farm zone encompassing the entire municipality.

The Court ruled that on the facts it could not say that Respondent "was unreasonable or that it failed to consider the needs of the community" (Pet. 14).

B. As Respondent has noted, pp. 2-3, *supra*, the Questions Presented in the Petition are not involved in this case, and were not presented or decided by the Court below.

In addition, while Questions Presented 1 and 2 are predicated upon the "action of a political subdivision" of the State, Petitioner fails to specify precisely what action was taken which *resulted* in the exclusion of the great majority of businesses from the entire territorial limits of the town and what action was taken which *resulted* in limiting the use of land to single family homes on lots of a minimum of two acres. In fact, the only action taken by the Respondent was to deny Petitioner's application to amend the zoning regulations. It certainly does not follow that such action resulted in the "exclusions" and "limitations" posed by questions 1 and 2.

The very foundation of the Questions Presented is a *non sequitur* and demonstrates Petitioner's total lack of understanding of the nature of his case.

To take but one further example of this misunderstanding: Petitioner would have this Court believe from Question 2 (Pet. 2) and his argument (Pet. 8) that two acre zoning was an issue in the Court below. This is far from the truth for the record shows that the zoning amendments which Petitioner submitted to the Respondent for enactment and which he prayed the trial court and Supreme Court of the State of Connecticut to order the Respondent to adopt, specifically propose a minimum lot area of two acres throughout the entire town of Weston. (Appendix 1, p. 5a).

Extraordinary as it may be, Petitioner seeks to smuggle into this Court, issues foreign to the case. In the abstract the Petition may present "intellectually interesting and solid problems. But this Court does not sit to satisfy a scholarly interest in such issues." *Rice* v. *Sioux Cemetery*, 349 U.S. 70, 74 (1955).

CONSTITUTIONAL PROVISIONS INVOLVED

1. Article 1, Sec. 1 of the Connecticut Constitution"

Sec. 1. All men when they form a social compact, are entitled to exclusive public emoluments or privileges from the community.

2. Article 1, Sec. 8 of the Connecticut Constitution:

Sec. 8. "* * * No person shall be compelled to give evidence against himself, nor be deprived of life, liberty or property without due process of law, nor shall excessive bail be required nor excessive fines imposed. * * *"

STATEMENT

This litigation concerns a statutory appeal from the denial of Petitioner's application to the Respondent, to amend the zoning regulations of the Town of

Weston, Connecticut. The Petitioner's application dated May 17, 1967, sought to amend the Weston zoning regulations by creating a shopping center zone which not only included Petitioner's property but also the adjacent existing shopping center. The amendments which were "designed to account for the local shopping need but also to preserve current form and context of the Regulations"[2] sought to include the permitted uses already in existence under the regulations with slight modifications to account for the suggested shopping center facilities. (Appendix 1). Section 5 of the Petitioner's regulations (Appendix 1, p. 5a) like section 5 of the existing regulations (Pet. 30) sought to limit the size of lots throughout the town to a minimum of two acres. In addition, petitioner not only proposed to retain the prohibited uses of the existing regulations but also to include an additional prohibited use. (Appendix 1,.p. 5a).

After a full public hearing, and a view of the proposed site of the new shopping center facilities by all the members of the commission, Petitioner's application was denied. Respondent gave the following five separate reasons, which the trial court and Supreme Court of the State of Connecticut found to be supported by the record:

> "1. The requested zone change is not in conformity with the comprehensive zoning plan of the Town of Weston.
>
> 2. Applicant has not proved that any changes have occurred which have substantially altered the character of the area.

---

[2] Exhibit 10, Booklet-Weston Center-A plan for Community shopping Facilities, Weston, Conn. by Bryan & Panico, consultants for Petitioner, *Edmond Colonx* v. *Planning and Zoning Commission of the Town of Weston*, 33 Conn. Law J. 35.

3. The applicant has not proved that the changes sought would further the public welfare.

4. The applicant has not proved there is sufficient need for the proposed uses so as to benefit the Town in general.

5. Route 57 (Weston Road) in the area of the proposed change is a two lane roadway, one travel lane in each direction. Going north adjacent to applicant's property this road curves to the east and then to the west. The increased traffic would present a hazard at this point in view of the width and curvature of this road and in its location opposite the entrance to the schools and school bus garage." (Pet. 20)

The Court below concluded that:

"The town of Weston is on the periphery of other larger metropolitan centers. The Weston shopping center, although its use is nonconforming under the present zoning regulations, contains the post office, a service station, a food market, a dry cleaner, a package store, a hardware store, a hobby store, a real estate office, a drygoods store, a bank, a drugstore and a luncheonette. On these facts we cannot say that the defendant commission was unreasonable or that it failed to consider the needs of the community. We note also that among the reasons given by the defendant for the denial of the plaintiff's application was the finding that the 'increased traffic would present a hazard in view of the width and curvature of the road and in its location opposite the entrance to schools and school bus garage.' The trial court's ruling was correct.

As to the remaining assignment of error, an examination of the memorandum of decision of the trial court indicates that the claims of the plaintiff were thoroughly cosidered and correctly determined. No further discussion by this Court is required." (Pet. 14)

ARGUMENT

I

There Are No Substantial or Important Reasons for Granting the Petition

Petitioner fails to show any substantial or important reasons for granting the petition. Petitioner makes no attempt to delineate precisely what the grounds for granting his petition are. Instead, he resorts to facts from a census—admitted by him not to be in the record—(Pet. 8-9) and, relies on the listing of such remote improbable analogies as "the fundamental right of all citizens to travel freely between the states and settle therein" (Pet. 7); the exclusionary effect of two acre zoning on minority and disadvantaged groups (Pet. 8) and "bussing for racial balance and of the unequal educational opportunity provided by public school systems" (Pet. 10). These references reflect no more than Petitioner's own rhetoric. The pleadings, record on appeal and decision of the Court below will be searched in vain for any such issues.

There exists no substantial reason for granting the Petition because the decision of the Court below can affect only the Petitioner. "This Court does not sit * * * for the benefit of particular litigants." *Rice* v. *Sioux City Cemetery,* 349 U.S. 70, 74 (1955). Whenever "review would be of no importance save to the litigants themselves" the Writ of Certiorari should not be granted. *Rudolph* v. *United States,* 370 U.S. 269, 270 (1962).

Before the decision of the Court below was announced, the Town of Weston amended its zoning regulations, effective December 15, 1970, by *inter alia,* establishing a neighborhood shopping center zone. The

shopping center zone did not include Petitioner's property but did encompass the existing shopping center facilities adjacent thereto.[3] The new regulations, which are presently in force, permit substantially the same uses of property within said zone as Petitioner sought in his 1967 application to amend the regulations. (Appendix 2; Appendix 1, p. 4a).

Accordingly, the decision of the Court below can only affect the litigants and the issues raised are not worthy of consideration by this Court.

In addition, the Petition is not worthy of consideration because it raises questions which the Petitioner claims to be presently litigating in the lower courts of the State of Connecticut.

In April 1969, prior to the decision of the Court of Common Pleas in this case, Petitioner commenced a declaratory judgment action in the Superior Court at Bridgeport, Connecticut.[4] In his amended complaint, Petitioner alleges, in paragraph 11 that:

> "Said regulations are invalid and void for the reasons that they are in direct violation of the Constitutions of the State of Connecticut and the United States * * * in that said regulations fail to set up a reasonable classification of lawful businesses and of minimum lot sizes within the

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[3] Petitioner is presently pursuing his statutory right to appeal the decision of the Respondent excluding his property from the boundaries of the neighborhood shopping center district. *William E. Coprio, et al.* v. *Planning & Zoning Commisison of the Town of Weston*, Docket No. 95857, Ct. of Common Pleas, Fairfield County at Bridgeport, Conn.

[4] *Edmond Cadoux* v. *Planning & Zoning Commisison of the Town of Weston*, Docket No. 36064, Superior Court, Fairfield County at Bridgeport, Conn.

> entire community; in that it arbitrarily and unreasonably interferes with the right of individuals to carry on lawful business within said Town by prohibiting the use of any land for a great majority of lawful businesses within said community; and in that it arbitrarily and unreasonably denies the use of land within the community for residential purposes by excluding therefrom persons of lower economic classes."

Respondent submits that since Petitioner is actively seeking relief in the State courts, the case is not yet ripe for review by this Court and a decision at this juncture would be tantamount to an advisory opinion.

Petitioner mistakenly asserts that "the decision of the Connecticut Supreme Court is clearly not in accord with the holding of this Court in *Village of Euclid* v. *Ambler Realty Co.*, 272 U.S. 365." (Pet. 9) Petitioner attempts to rewrite the *Euclid* decision by arguing that approval of the Village of Euclid zoning regulations which excluded all business uses from a residential zone, was "clearly predicated upon such uses being allowed *somewhere* within the community." (Pet. 9)

A reading of the *Euclid* case fails to disclose any such holding or intendment.

This Court did say—as the Court below noted—that "the reasonableness of a zoning ordinance must be judged by the circumstances of each particular case." (Pet. 14)

> "The ordinance now under review and all similar laws and regulations must find their justification in some aspect of the police power, asserted for the public welfare. The line which in this field separates the legitimate from the illegitimate as-

> sumption of power is not capable of precise delimination. It varies with circumstances and conditions. A regulatory zoning ordinance, which would be clearly valid as applied to the great cities, might be clearly invalid as applied to rural communities." *Euclid* v. *Ambler Realty Co.*, 272 U.S. 365, 388 (1926).

The Court below held that under the circumstances and conditions existing at the time Petitioner submitted his application, Respondent did not act unreasonably by denying said application, thereby leaving the zoning regulations unchanged. The ruling of the Court below was entirely consistent with the *Euclid* case and Petitioner's reliance thereon is misplaced.

II

The Decision Below Is Obviously Correct

The thrust of the petition is that the case was wrongly decided and the judgment below should now be reversed for the benefit of Petitioner. The short answer is that even if this particular decision were in error, "this Court does not sit * * * for the benefit of particular litigants." *Rice* v. *Sioux City Cemetery*, 349 U.S. 70, 74 (1955).

Moreover, far from being wrong, the decision below is obviously correct. The Petitioner had the burden of proving to the satisfaction of Respondent, the trial court and the Court below that the proposed amendments to the zoning regulations were warranted and would be in the best interests of the community. This he failed to do.

The decision is firmly based upon the facts in the record, most of which were elicited from Petitioner's

expert on town planning. For example, the trial court noted that:

> "Plaintiff's expert stated to the defendant commission concerning the existing shopping center: 'Yet, for a town of your size it is a complete center, it has all the aspects of a good center of town.' Thus the defendant commission reasonably could conclude that the changes sought would not further the public welfare or that there was sufficient need for the proposed uses so as to benefit the town in general." (Pet. 20-21)

In an attempt to persuade the Court that the case below was decided incorrectly, Petitioner dwells upon the testimony and conclusions of his traffic engineer. (Pet. 4-5). He fails to mention, however, that there was testimony from other individuals about the traffic hazards which would be created if the present shopping center facilities were expanded and that the Respondent viewed the premises included in the proposed change. Petitioner also overlooks a very basic principle of law that the testimony of his expert was subject to the test of credibility and may have been accepted or rejected by the Respondent, trial court and the Supreme Court of the State of Connecticut in whole or in part. *National Folding Box Co.* v. *City of New Haven,* 146 Conn. 578, 586, 153A2d 420; *Van Detti* v. *Parsons Bros. Inc.,* 146 Conn. 282, 286, 150 A2d 200.

In addition, the decision of the Court below was based upon principles of law clearly enunciated by this Court in *Euclid* v. *Ambler Realty Co.,* 272 U.S. 365 (1926); the United States Court of Appeals for the Sixth Circuit in *Valley View Village, Inc.* v. *Proffet,* 221 F.2d 412 (6th Cir.); the Supreme Court of Minnesota in *Connor* v. *Township of Chanhassen,* 249 Minn. 205, 81 N.W. 2d 789; the New York courts

in *Old Westbury* v. *Foster,* 193 Misc. 47, 83 N.Y.S.2d 148[5] and a prominent authoritative text on the law of zoning. (Pet. 13-14).

On the basis of the evidence in the record, the Supreme Court of the State of Connecticut had no reasonable alternative but to affirm the decision of the lower court and the decision of the Respondent.

CONCLUSION

For the foregoing reasons, it is submitted that the Petition for a Writ of Certiorari to the Supreme Court of the State of Connecticut be denied.

Respectfully submitted,

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May 29, 1972

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[5] The following cases are also directly in point: *McDermott* v. *Village of Calverton Park,* 454 S.W.2d 577 (Mo. 1970); *Blank* v. *Town of Lake Clarke Shores,* 161 So. 2d 683 (Fla. 1964); *Gautier* v. *Town of Jupiter Island,* 142 So. 2d 321 (Fla. 1962).

APPENDIX 1

Sections 3, 4, 5 and 7 of Petitioner's Proposed Amendments to the Weston Zoning Regulations

A. It is proposed to amend SECTION 3—DISTRICTS by deleting the existing provisions and substituting the following:

SECTION 3—DISTRICTS

For the purpose of these regulations, the Town of Weston is hereby divided into a Residential and Farming District and a Town Shopping Center District. These Districts are delineated and are a part of the comprehensive plan of zoning as follows:

(a) *Residential and Farming District:* The Residential and Farming District is designed to provide primarily for rural residential development appropriate for the conditions characteristic of the Town and encompasses farms, woodland, water supply reservations and open space and conservation areas. The District encompasses the entire Town of Weston outside of any Town Shopping Center District.

(b) *Town Shopping Center District:* The Town Shopping Center District is designed to provide for retail business and office development necessary for local service as part of an established center of the Town where community activities are conducted. The boundaries of the District are shown on a map entitled "Town Shopping Center District, Town of Weston, Connecticut" dated May 1, 1967, which map is hereby declared to be a part of these regulations.

B. It is proposed to amend SECTION 4—PERMITTED USES by deleting the existing provisions and substituting the following:

SECTION 4—PERMITTED USES

No building, structure or premises shall be built, erected, altered, used, arranged or designed to be used except for

one or more of the following purposes specified as permitted in the District where the bidding, structure or premises, or part thereof, is located:

(a) *Residential and Farming District:*

(1) A dwelling house with the customary accessory buildings for the use of occupants, such as a private garage; barn, poultry house, farm buildings necessary for farming or truck gardening; green houses and other similar and incidental buildings necessary to nursery gardening; and roadside stands for the display and sale of farm and nursery produce raised on the premises adjoining such stands; PROVIDED, HOWEVER, that no structure which is not being used as a dwelling house or for residential purposes shall thereafter be used as a dwelling house or for residential purposes unless such structure and use is in all respects in compliance with the requirements of these Regulations.

(2) Customary home occupations carried on by the residents, including business or professional offices or home industries or home services employing not more than three persons not resident on the premises, provided that such occupations or industries create no noise, odor or unsightly condition noticeable off the premises. Such uses shall not include the sale of objects not made on the premises nor a restaurant or tea room.

(3) Farming, forestry, truck gardening, nursery produce raised on the premises.

(4) Church, parish house, Sunday school, public school, public museum, Town recreational buildings, playgrounds, public or private libraries, community buildings, public park or any philanthropic, educational and religious use by a recognized and duly organized non-profit body or

governmental unit, other than a camp, hospital, asylum or correctional institution.

(5) The leasing of rooms and the taking of boarders by owner occupants; PROVIDED, HOWEVER, that not over six roomers or boarders are thus accommodated and PROVIDED FURTHER, that nothing in this Section shall be construed to permit tourist cabins, trailer camps, apartments, hotels, inns, taverns or roadhouses.

(6) 'For Sale' and 'To Let' signs advertising the premises or tract on which such signs are located, signs erected by town, county, state or federal governmental agencies in connection with traffic control or governmental operations, signs advertising goods or produce made or raised on the premises on which such signs are located, and signs bearing the name and occupation of a person and located on the premises where such person resides, and signs bearing the name only of a person and located on a road serving the premises where such person resides: PROVIDED, HOWEVER, that no more than two such signs shall be located on any premises in conjunction with which the same area used, and PROVIDED FURTHER, that no such sign shall be larger than 16 square feet in area and that no moving or flashing signs or signs illuminated in colored lights shall be permitted.

(7) A bona fide non-commercial membership club.

(8) A guest house, which shall be defined for the purposes of this regulation as a detached accessory building located on the same plot or lot with the main building and in all cases to be sold, transferred or conveyed together with said main building as one piece of property; said guest house to be used solely by temporary guests of the occupants of the premises and for

the use of which no rental or other charge is made or received; and such guest house to have no kitchen or cooking facilities and to consist of no more than two (2) rooms exclusively of a lavatory or bath.

(b) *Town Shopping Center District:*

(1) Stores and other buildings where goods are sold or service is rendered primarily at retail.

(2) Business and professional offices; banks and other financial institutions.

(3) Restaurants and other food service establishments where customers are served only when seated and within an enclosed buildings. Such uses, however, may include a food take-out service incidental to the primary permitted use.

(c) *All Districts:*

(1) Removal from the premises of top soil, or removal from the premises of sand, gravel or stone as part of a bona fide construction or grading operation to be completed within a reasonable time and provided that no damage is done to the landscape and that no substantial impairment of scenic beauty results from such operations. Before commencing work on any such removals, a notice in writing must be filed with the Planning and Zoning Commission describing the nature and extent of such removal operations and the person performing such work shall not proceed with the same until notified by the Planning and Zoning Commission in writing that it is permissible to do so. In determining what action should be taken with respect to said notice, the Planning and Zoning Commission may require that a contour map, prepared and certified substantially correct by a registered land surveyor showing the existing contours of

the property involved and the contours of said property after such removals have been completed, be filed with the Commission together with a detailed written description indicating the nature and extent of such construction or grading operations, the dates on which the various stages of said operations will be completed including the date of final completion, and a bond or other security in such form and amount as shall be specified by said Commission to insure compliance with the contour map thus filed and the plan for said operations as contained in said written description. Said data may be required by the Commission as a condition for permitting such operations under this subsection of these Regulations, in any case where the same is found necessary by the Commission to enable proper administration of this subsection.

C. It is proposed to amend Paragraphs (a) and (d) of SECTION 5—AREA AND LOT REGULATIONS by deleting the existing provisions and substituting the following:

SECTION 5—AREA AND LOT LINE REGULATIONS

(a) No lot shall have an area of less than two (2) acres exclusive of any area reserved for or used as a road or right-of-way.

(d) No structure shall be erected within 30 feet from any side or rear lot line, and in addition, in the Town Shopping Center District within 30 feet of any Residential and Farming District boundary line. In the Town Shopping Center District no structure shall exceed a height of 35 feet.

D. It is proposed to amend SECTION 7—PROHIBITED USES by adding the following prohibited uses:

(dd) establishments intended primarily for motor vehicle washing; and establishments for the sale or rental of new or used motor vehicles or trailers.

APPENDIX 2

Sections 200, 322.1, 322.2 and 322.3 of the Zoning Regulations of the Town of Weston, Connecticut

As Amended to December 15, 1970

ARTICLE II—ESTABLISHMENT OF DISTRICTS

Section 200. Classes of Districts and Purposes

Inasmuch as the character and type of development throughout the Town is predominantly rural residential, supplemented by a limited amount of business and service establishments for the convenience of local residents, and based upon the rugged nature of the Town's topography, and the policies expressed in the adopted Town Plan of Development, the Town of Weston is hereby divided into the following districts:

R-2A, Two Acre Residential and Farming District

NSC, Neighborhood Shopping Center District

* * * * * * * * * *

322. *Neighborhood Shopping Center District*

322.1 *Permitted Principal Uses:*

a. Stores and shops for the conduct of retail sales and personal service uses of a local convenience character.

b. Banks, business, professional, and civic offices.

c. Restaurants and other food service establishments where customers are served only when seated within an enclosed building. Such uses, however, may include a food take-out service incidental to the primary permitted use.

d. Automotive service stations, as defined in Section 610, provided that any such station is located in a place approved by the Commission as not interfering with the normal operation of

the balance of the Neighborhood Shopping Center District development, or the movement of pedestrian and vehicular traffic thereto and therefrom.

322.2 *Permitted Accessory Uses:*

a. Parking and loading space for motor vehicles, in accordance with the requirements of Section 360.

b. Business signs, in accordance with the requirements of Section 350.

c. Exterior lighting, in accordance with the requirements of Section 312.8.

d. Any other use clearly and customarily incident to a permitted principal use.

322.3 *Limitations on Uses:*

a. The total floor space devoted to any single business establishment shall not exceed 7,500 square feet, exclusive of basement area devoted to utilities and storage, and not open to the public.

b. There shall be no exterior storage of articles for sale, or of other materials or equipment, except for a small amount of materials and equipment placed at the gasoline pump, and solely for convenience in serving customers.